
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. THOMAS FRANCIS HALE, Defendant.	MEMORANDUM DECISION and ORDER DENYING MOTION FOR RELEASE PENDING APPEAL Case No. 2:06-cr-871-DN District Judge David Nuffer
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On November 12, 2014, the court held a hearing¹ to enter a judgment of acquittal as to Count 1 of the indictment as directed by the Tenth Circuit Court of Appeals.² Prior to this hearing, the court ordered a revised presentence report to determine the recalculation of the sentence under the sentencing guidelines after acquittal on Count 1.³ The recalculated presentence report resulted in no change to the original sentencing guideline range.⁴ After carefully reviewing the briefs,⁵ the cited legal authority, and the parties' arguments at the hearing, the court entered a judgment of acquittal on Count 1 and sentenced Defendant Thomas Francis Hale to a term of 27 months in prison; the same sentence originally imposed which Hale began serving in August 2013.

¹ Minute Entry, docket no. 433, filed Nov. 12, 2014.

² See *United States v. Hale*, 762 F.3d 1214 (10th Cir. 2014).

³ Minute Entry, docket no. 420, filed Oct. 6, 2014.

⁴ Amended Presentence Investigation Report, docket nos. 422 and 428, filed under seal on Oct. 28, 2014 and Nov. 7, 2014 respectively.

⁵ Supplemental Sentencing Memorandum and Objections to Presentence Report, [docket no. 423](#), filed Nov. 5, 2014; Updated Sentencing Memorandum of United States, [docket no. 427](#), filed Nov. 6, 2014; Defendant's Motion to reconsider Docket Entry and Motion to Continue Sentencing Hearing, [docket no. 430](#), filed Nov. 10, 2014; Government Response to Defendant's Motion to Reconsider and Opposition to Defendant's Motion to Continue Sentencing Hearing, [docket no. 431](#), filed Nov. 11, 2014.

After the court announced the judgment in court, Hale's counsel stated he anticipated an appeal of the ruling and orally moved for Hale's release pending appeal. The court denied the oral motion on the record. Hale's counsel then requested a written decision on the denial of the oral motion.⁶

DISCUSSION

Release pending appeal by a defendant is governed by [18 U.S.C. § 3143\(b\)\(1\)](#), and provides:

[T]he judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds –

- (A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and
- (B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in –
 - (i) reversal,
 - (ii) an order for a new trial,
 - (iii) a sentence that does not include a term of imprisonment, or
 - (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.⁷

The parties have previously conceded that Hale does not pose a risk of flight or a danger to the community under subsection (A).⁸ But the court finds that Hale cannot satisfy all criteria under subsection (B) for release pending appeal.⁹ Even assuming "that the appeal is not for the purpose of delay and raises a substantial question of law or fact," the court remains unconvinced that the appeal will result in reversal, an order for a new

⁶ See Minute Entry, docket no. 433, filed Nov. 12, 2014.

⁷ [18 U.S.C. § 3143\(b\)](#).

⁸ Memorandum Decision and Order Denying Motion for Release Pending Appeal at 2, [docket no. 414](#), filed Mar. 26, 2014.

⁹ See *United States v. Affleck*, 765 F.2d 944, 946 (10th Cir. 1985) (en banc) (statute places burden on convicted defendant to prove he meets all criteria for release pending appeal).

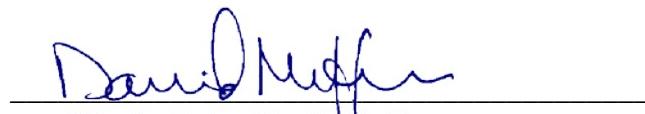
“sentence that does not include a term of imprisonment, or a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.”¹⁰ Because Hale has not met his burden to prove that he meets all the criteria under subsection (B) for release pending appeal, the motion is denied.

ORDER

IT IS HEREBY ORDERED that the oral motion for release pending appeal of the sentence imposed after acquittal on Count 1 is DENIED.

Signed November 12, 2014.

BY THE COURT



District Judge David Nuffer

¹⁰ 18 U.S.C. § 3143(b).